

LEE JESSE PETERSON

IBLA 94-811

Decided September 21, 1995

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void for failure to file an affidavit of assessment work for the claims on or before December 30, 1993. CMC 5164, CMC 5165, CMC 121237, CMC 121238, CMC 121240, CMC 147602, and CMC 147604.

Affirmed.

1. Mining Claims: Abandonment—Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold—Mining Claims: Rental or Claim Maintenance Fees: Generally—Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A mining claimant who files a satisfactory certification of exemption from payment of rental fees is required to file in the proper BLM office evidence of assessment work performed within the time period prescribed in P.L. 102-381, 106 Stat. 1378-79 (1992), and failure to do so results in a conclusive presumption of abandonment of the mining claim.

APPEARANCES: Lee Jesse Peterson, Black Hawk, Colorado, pro se; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE BYRNES

Lee Jesse Peterson has appealed from a July 25, 1994, decision of the Colorado State Office, Bureau of Land Management (BLM), declaring unpatented placer mining claims CMC 5164, CMC 5165, CMC 121237, CMC 121238, CMC 121240, CMC 147602, and CMC 147604 abandoned and void for failure to file an affidavit of assessment work for the claims during the filing period ending December 30, 1993.

On August 30, 1993, Peterson filed a "Certification of Exemption from Payment of Rental Fee" covering the claims for the assessment year running

from September 1, 1992, through September 1, 1993, as well as a "Certification of Exemption" for the assessment year running from September 1, 1993, through September 1, 1994, pursuant to the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Act), P.L. 102-381, 106 Stat. 1378-79 (1992).

By decision dated September 24, 1993, BLM notified Peterson that it had determined that his certification of exemption documents met the statutory and regulatory requirements of the Act. However, BLM reminded Peterson: "Remember that you must perform your assessment work as usual (43 CFR 3833.2) and record it with the Bureau of Land Management (Colorado State Office) and the county as in the past."

On July 25, 1994, BLM issued the decision subject to this appeal. In his notice of appeal, Peterson states:

The decision is incorrect. I did file the required papers in a timely fashion with both the County and the BLM. I have been searching for my copies of the papers but have not yet been able to locate them. I am continuing to search for the papers. I did obtain from the County a copy of the document recorded with the County, my file copy of which I also have not been able to locate. [1/]

On October 5, 1992, Congress passed the Act, which established, inter alia, that

for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28! 28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

106 Stat. 1378. The Act also contained an identical provision governing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of the \$100 rental fee on or before August 31, 1993. 106 Stat. 1378! 79. The Act further provided, under certain conditions,

1/ By order dated Sept. 28, 1994, the Board granted Peterson's request for a stay of BLM's decision pursuant to 43 CFR 4.21.

for an exemption from the payment of the rental fees for claimants holding 10 or fewer claims, millsites or tunnel sites, the so-called small-miner exemption. Id. 2/

Further, the Act provided that those claimants who qualify for the small miner exemption for the 1993 fiscal year may elect to either pay the claim rental for the assessment year ending at noon on September 1, 1993, or do the assessment work required by the Mining Law of 1872, 30 U.S.C. §§ 28-28e (1988), and meet the filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (a) and (c) (1988). Because the language of this provision of the Act governs Peterson's appeal to this Board, we set it forth below:

[F]or fiscal year 1993, each claimant * * * that is producing under a valid notice or plan of operation not less than \$1,500 and not more than \$800,000 in gross revenues per year as certified by the claimant from ten or fewer claims * * * may elect to either pay the claim rental fee for such year or in lieu thereof do assessment work required by the Mining Law of 1872 (30 U.S.C. 28-28e) and meet the filing requirements of FLPMA (43 U.S.C. 1744 (a) and (c)) on such ten or fewer claims and certify the performance of such assessment work to the Secretary by August 31, 1993.

Again, the Act provided that for fiscal year 1994, each claimant shall elect to either pay the claim rental for the assessment year beginning at noon of September 1, 1993, or in lieu thereof do the assessment work required and meet the filing requirements of section 314 of FLPMA for the 10 or fewer claims. 106 Stat. 1378.

On July 15, 1993, the Department promulgated regulations implementing the Act. BLM declared Peterson's claims abandoned and void pursuant to 43 CFR 3833.1-7 (1993), which provides in relevant part:

(a) The affidavit of assessment work performed by a small miner claiming a rental fee exemption shall be filed with the proper State Office of the BLM pursuant to §3833.2 and meet the requirements of §3833.2-4.

2/ On July 15, 1993, the Department promulgated regulations to implement the rental fee provision of the Act. 58 FR 38186 (July 15, 1993). Those regulations include a section governing rental fee exemption qualifications, 43 CFR 3833.1! 6(a) (58 FR 38199 (July 15, 1993)), which substantially tracks the statutory language and sets forth various conditions, all of which must be met in order to qualify for the exemption.

(b) For mining claims located on or before October 5, 1992, to claim the small miner's exemption, the following requirements shall be met:

(1) For the assessment year beginning September 1, 1992. The affidavit of assessment work for the period of September 1, 1992, through September 1, 1993, shall be filed on or before December 30, 1993, in the proper State Office of the BLM. The certified statement required by paragraph (d) [3/] of this section shall be filed in the proper State Office of the BLM on or before August 31, 1993, and shall contain all of the information required in paragraph (d) of this section.

(2) For the assessment year beginning September 1, 1993. The affidavit of assessment work for the period of September 1, 1993, through September 1, 1994, shall be filed on or before December 30, 1994, in the proper State Office of the BLM. The certified statement required by paragraph (d) of this section shall be filed on or before August 31, 1993, and shall contain all of the information required in paragraph (d) of this section.

[1] The Act and implementing regulations make clear that in lieu of paying the rental fee, a miner claiming the exemption must file the affidavit of assessment work performed with the proper state office of BLM on or before December 30. Having properly filed the certification of exemption from payment of the rental fees otherwise required by the Act, Peterson was responsible for performing the assessment work required by the Mining Law of 1872, 30 U.S.C. §§ 28-28e (1988), and for meeting the filing requirements of section 314 of FLPMA, 43 U.S.C. § 1744(a) and (c) (1988). 106 Stat. 1378; 43 CFR 3833.1-7(a),(b), and (d). Section 314(c) of FLPMA provides, inter alia, that failure to file evidence of annual assessment work or a notice of intention to hold "shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner."

The Board has consistently held that responsibility for complying with the recordation and filing requirements of FLPMA rests with the owner

3/ Paragraph (d) provided that

"[t]he small miner shall file a separate statement on or before August 31, 1993, supporting the claimed exemption for each assessment year a small miner's exemption is claimed (for the year ending September 1, 1993, the assessment affidavit required by FLPMA continues to be due on December 30, 1993; and for the year ending September 1, 1994, the assessment filing is due on December 30, 1994), certified to under penalty of 18 U.S.C. 1001." Subparagraphs (1) through (8) set forth the information which the statement must contain.

of the unpatented mining claim or millsite or tunnel site, as Congress mandated that failure to file the proper documents in the proper offices within the time periods prescribed in section 314 of FLPMA would, in and of itself, cause the claim or site to be lost. The Supreme Court upheld the constitutionality of section 314 of FLPMA, concluding that a mining claim for which timely filings are not made is extinguished by operation of law notwithstanding the claimant's intent to hold the claim. United States v. Locke, 471 U.S. 84, 97 (1985). Thus, section 314 of FLPMA is self-operative, and a claim must be deemed abandoned when an annual filing is not timely received. Ptarmigan Co., 91 IBLA 113, 118 (1986), aff'd, Bolt v. United States, 994 F.2d 603 (9th Cir. 1991). Congress did not provide for waiver of the section 314 requirements, and the Board has held that the Department is without authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369, 372 (1981).

We must assume that Congress was aware of the interpretation that this Department and the courts had given to section 314 of FLPMA when it mandated its application in cases where a small miner exemption is granted. Accordingly, a mining claimant who files for a small miner exemption must also file an affidavit of assessment work on the 10 or fewer claims within the time period specified in the Act and the implementing regulations. Failure to do so results in a conclusive presumption of abandonment.

Peterson has not shown that he satisfied the requirement of filing the affidavit of assessment work with BLM during the mandatory filing period. As the record before us does not reflect that his assessment affidavit was timely filed on or before December 30, 1993, the subject mining claims were properly deemed to be abandoned and void. Charlene Schilling, 87 IBLA 52 (1985); J. Neil Smith, 77 IBLA 239 (1983); Lynn Keith, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Bymes
Chief Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge

